

DECLARATIONS  
000328  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
WALNUT BLUFFS

PRESENTED  
FOR  
REGISTRATION

98 NOV 12 AM 11:40  
LAURA M. RIDDICK  
REGISTER OF DEEDS  
WAKE COUNTY

THIS DECLARATION, made on the date hereinafter set forth by William J. Brown, Jr. and Robert H. Brown, (hereinafter referred to as the "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant pursuant to that Deed recorded in Book 2224, page 488, Wake County Registry in the Owner of land described in Exhibit A;

WHEREAS, Declarant desires to ensure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the subdivision, and to provide for the maintenance and upkeep of the exterior of all townhouse units and the Homeowners Common Area, as hereinafter defined, and to that end desires to subject the real property, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable, for the efficient preservation, protection and enhancement of the values and amenities in said subdivision and to ensure the residents' enjoyment of the specific rights, privileges and easements in the Homeowners Common Area, as hereinafter defined, and to provide for the maintenance and upkeep of the exterior of all townhouse units and the Homeowners Common Area, to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Homeowners Common Area and the exterior of the Townhouse Units, administering and enforcing these covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated under North Carolina law, WALNUT BLUFFS HOMEOWNERS ASSOCIATION; as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;

NOW THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the said real property described in Exhibit A and such additions thereto as may be hereafter made pursuant to Article XIII, Section 5 hereof, is and shall be held, transferred, sold, conveyed used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the title or interest in said real property and any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Declarant" shall mean and refer to William J. Brown, Jr. and Robert H. Brown, their heirs, successors and assigns.

Section 2. "Detached House Lot" shall mean and refer to any lot shown upon any recorded subdivision map of the Properties

ref

upon which a Detached Dwelling Unit is to be situated other than lots located in sections designated for townhouse construction and Common Areas.

Section 3. "Homeowners Association" or "Association" shall mean and refer to WALNUT BLUFFS HOMEOWNERS ASSOCIATION, a North Carolina non-profit corporation, its successors and assigns.

Section 4. "Homeowners Common Area" or "Common Area" shall mean and refer to all the real property to be owned by the Association for the common use and enjoyment of the Owners of Lots within WALNUT RIDGE and to be designated as "Common Area," and any additional area annexed thereto at a later date. All water and sewer lines which serve this development and which lie outside public right of way and City of Raleigh utility easements and do not serve individual Lots are Common Area. All private streets and pedestrian access easements are Common Area. All stormwater drainage easements, pipes, detention or retention facilities not maintained by the public and pipes that serve more than one Lot are Common Area; open space areas shown on recorded plats of the Properties are Common Area."

Section 5. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Homeowners Common Area, if any.

Section 6. "Member" shall mean and refer to every person or entity who hold membership in the Homeowners Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Properties" shall mean and refer to that certain real property described in Exhibit A, and any additional land later annexed into the Association in accordance with the terms and conditions herein provided.

Section 9. "Townhome Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties upon which an attached Townhome Dwelling Unit is to be situated, with the exception of the Common Area and Detached House Units.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Homeowners Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be three classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Townhome Lots except Class C Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owners of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed.

(b) Class B Lots. Class B Lots shall be all Detached House Lots except Class C Lots as the same are hereinafter defined. Each Class B Lot shall entitle the Owners of said Lot to (1) one vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed.

(c) Class C Lots. Class C Lots shall be all Townhome and Detached House Units owned by Declarant which have not been converted to Class B and C Lots as provided in subparagraphs (1) or (2) below. The Declarant shall be entitled to three (3) votes for each Class C Lot.

The Class C Lots shall cease to exist and shall be converted to Class A Lots or Class B Lots upon the happening of either of the following events, whichever shall first occur:

(1) When the total number of votes appurtenant to the Classes A and B Lots equal the total number of votes appurtenant to the Class C Lots; or

(2) On January 1st, 2002.

When the Class C Lots are terminated, they shall be converted to Class A Lots or Class B Lots. Declarant then shall have the same voting rights and maintenance assessment as other Owners of Class A Lots and Class B Lots.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of use and enjoyment in and access to, from, and over the Homeowners Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Right of the Homeowners Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association;

(b) The right of the Homeowners Association to dedicate or transfer all or any part of the Homeowners Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless at least three-quarters (3/4) of each Class of members agree to such dedication or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements for the installation and maintenance of sewage, utility (including CATV) and drainage facilities upon, over, under and across the Homeowners Common Area without the assent of the Members when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Homeowners Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another non-profit corporation with purposes similar to those of this Association;

(c) The rights of Owners of Townhome Lots to the exclusive use of parking

spaces as provided herein;

(d) The right of the Homeowners Association, with the written assent of Members entitled to at least two-thirds (2/3) of the votes of each Class of member to mortgage, pledge, deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the property rights of the Homeowners Association as set forth herein and the property rights of the Owners.

(e) The right of the Homeowners Association, to exchange any portion of the Homeowners Common Area for other properties provided that:

1. written notice of the exchange is given to each member of the association except in cases where the exchange is done to eliminate an encroachment; and

2. after notice is given, the Homeowners Association must approve such exchange in accordance with the provision herein described as "Membership and Voting Rights,";

3. the exchanged properties and other considerations are of like value and utility; and

4. the acreage and configuration of the remaining open space equal (including property to be received in such exchange) or exceed the requirements of the Raleigh City Code; and

5. the exchange is approved by the City of Raleigh Planning Director.

#### Section 2. Delegation of Use.

(a) Family. Subject to the limitations of subsection (a)-(e) above, the right and easement of use and enjoyment and access granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants or Contract Purchasers. Subject to the limitations of subsections (a)-(e) above, the right and easement of use and enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence or a portion of said residence within the Properties as their principal residence in Wake County, North Carolina.

(c) Guests. Subject to the limitations of subsections (a)-(e) above, the right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants, or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors governing said use.

#### Section 3. Parking Rights

(a) Assigned Parking Spaces. Ownership of each Townhome Lot shall entitle the Owner(s) of such Lot to the use of not less than two automobile parking spaces, one of which shall be specifically assigned by the Declarant at or prior to the conveyance of such Lot to the Owner, together with the right of ingress and egress in and upon said parking area and private streets. The Board of Directors of the Homeowners Association may reassign said parking spaces from time to time as it may determine is in the best interest of the Members.

(b) Visitor Parking. Parking spaces designated for the exclusive use of visitors to the Properties shall not be used by

any Owner for the parking of his vehicles, but may be used by persons visiting Owners for period not to exceed one week in time.

(c) Recreation Vehicles. No campers, trucks, vans, or recreational vehicles of Owners may be parked or kept within the Properties, except at locations specifically designated for such parking by the Board of Directors of the Homeowners Association. The Board of Directors may make reasonable charges for parking of such vehicles in designated areas and may, at its discretion, refuse to allow such parking within the confines of the Properties. No trailers, boats or tractors may be parked or kept within the Properties, except for maintenance equipment owned by the Homeowners Association. All vehicles of less than three quarter of a ton in weight are exempt from the provisions hereof.

(d) Rules and Regulations Regarding Parking. The Board of Director of the Homeowners Association may make such reasonable rules and regulations as it may elect with respect to the parking of vehicles aforesaid and may amend and vary the requirements of subparagraphs (b) and (c) above without the consent of the Members of the Association. All modifications and amendments shall be in writing and kept with the official records of the Association.

Section 4. Conveyance of Title to the Homeowners Association. Declarant covenants, for itself and its successors and assigns, that it will convey fee simple title to the Homeowners Common Area to the Homeowners Association prior to the conveyance of the first Lot to an Owner within any phase, section, or annexation. Such conveyance shall be free and clear of all encumbrances and liens, except utility, flood storage, drainage and greenway easements of record or shown on the recorded plats of WALNUT BLUFFS. Declarant reserves a temporary construction easement to, from, over and across the Homeowners Common Area for the purpose of constructing additional residences upon the Lots; provided that following construction all disturbed Homeowners Common Area shall be restored to as near the condition as that which prevailed prior to the use of the temporary construction easement as is reasonably practicable.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal or Corporate Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest and costs of collections, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest, costs and attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s), corporation(s), or entities owning such Lot at the time the assessment fell due. The personal or corporate obligation of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; however, such unpaid assessments or charges shall continue to be a lien on the property against which the assessment was made.

Section 2. Purposes of Assessments. The assessments levied by the Homeowners Association shall be used exclusively to promote the recreation, health, safety and welfare of the

residents of the Properties and, in particular, for the maintenance and repair of private streets, maintenance, repair, and reconstruction of the exterior of townhouse units, for the payment of governmental water and sewage disposal charges attributable to the Homeowners Common Area, as well as other like expenses, including, but not limited to, charges for electricity, for the maintenance, repair and reconstruction of the exterior of townhouse units and for the acquisition, improvement and maintenance of properties, services and facilities devoted and related to the use and enjoyment of the Homeowners Common Area, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes and public assessments levied against the Homeowners Common Area, the procurement of insurance in accordance with Article XI hereof, and in accordance with the By-Laws, the employment of attorneys and others to represent the Homeowners Association when necessary, and such other needs as may arise. In addition, expenditures by the Homeowners Association for landscaping, planting and maintenance of areas within Townhome Lots, but lying outside of residence buildings and enclosed patio areas, as well as upon any landscape easement as shown on the survey of WALNUT RIDGE shall be deemed expenditures for the recreation, health, safety and welfare of the residents of the Properties and are hereby authorized.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Townhome Lot to an Owner, the maximum annual assessment shall be \$ 900.00 per Class A Lot (\$ 75.00 per month) and \$ 60.00 per Class B Lot (\$ 5.00 per month); and \$ 450.00 per Class C Lot (\$ 37.50 per month), for Townhome Lots; and \$ 30.00 per Class C Detached House Lot (\$ 2.50 per month); subject to provisions of Section C below.

(a) From and after January 1 of the year and immediately following the conveyance of the first Lot to an Owner, the Board of Directors may increase the maximum annual assessment, effective January 1 of each year, without a vote of the membership, provided that any such increase shall not exceed ten percent (10%) of the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments may be increased without limitation if such increase is approved by Members entitled to no less than two-thirds (2/3) of the votes appurtenant to each Class, in person or by proxy, at a meeting duly called for that purpose.

(c) The Board of Directors may fix the annual assessments at amounts not in excess of the maximum, provided, however, that the ratio of the assessment established for each Class C Lot shall always be one-half (1/2) of the assessment for respective Class A or Class B Lot. In the event that Class C Lots are converted to Class A or B Lots, the assessment with respect to each such Lot shall be prorated and charged according to its class as of the date of each conversion and reconversion. Notwithstanding the foregoing, any Class C dwelling for which a certificate of occupancy has been issued shall be treated as a Class A Lot or Class B Lot for assessment purposes. Such Lot shall remain a Class C Lot for all other purposes.

(d) Any annual assessment established by the Board of Directors shall continue thereafter as the annual assessment until changed by the Board or by the Members.

Section 4. Special Assessments for Capital Improvements. In addition the annual assessments authorized above, the Homeowners Association may levy, in any assessment year, a

special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Homeowners Common Area, including fixtures and personal property related thereto, or as necessary, for defraying the cost of repair or reconstruction of the exterior of a townhouse unit, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article and shall be in the ratios provided in Section 3(c) of this Article.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members no less than 30 days nor more than 50 days prior to the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast two-thirds (2/3) of the votes appurtenant to the Class A Lots and two-thirds (2/3) of the votes appurtenant to the Class B Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and, if called for a date not less than 50 days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 6. Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of all or any part of the Homeowners Common Area to the Homeowners Association. The first annual assessment shall be the "maximum annual assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid. If a certificate states that an assessment has been paid; such certificate shall be conclusive evidence of such payment.

Section 7. Effect of Nonpayment of Assessments, Remedies. Any assessment not paid within twenty (20) days after the due date shall incur a late charge in the amount of \$10.00 and, if not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less. The Homeowners Association may bring an action at law against the Owner personally or corporately obligated to pay the same or foreclose the lien against the property; interest, late payment charge, costs and reasonable attorney's fee of such action or foreclosure shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Homeowners Common Area or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien, but the sale or transfer of any Lot pursuant to the foreclosure of such mortgage or deed of trust shall extinguish the lien of such assessments as to any installment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from

liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 9. Exempt Property. All property dedicated to and accepted by a local public authority, and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including, but not limited to, the re-roofing with different materials or color, the painting of exterior of the structures, applying siding, the erection of roofing, antennas, satellite dishes or disks, not limited to, aerials or awnings, or the placement of reflective or other material in the windows of a dwelling unit or other exterior attachment, until plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and color scheme and location in relation to surrounding structures and topography by the Board of Directors of the Homeowners Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. If the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after complete building plans and specifications have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with. The Homeowners Association shall have the right to charge a reasonable fee, not to exceed \$25.00 for receiving and processing each application. Neither the board of Directors nor the architectural control committee shall approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety, or appearance of any Lot or the Homeowners Common Area. Nothing herein shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development.

#### ARTICLE VI

##### EXTERIOR MAINTENANCE

In addition to maintenance of the Homeowners Common Area, the Association shall provide exterior maintenance on each attached townhome on a Townhome Lot subject to assessment hereunder. Such exterior maintenance includes, but is not limited to: painting, repair, replacement and care of exterior building surfaces, roofs, gutters and downspout, and care of walks, grass, trees, shrubs, and other exterior landscaping provided by Declarant or by the Homeowners Association. The exterior maintenance responsibilities of the Association shall not include glass surfaces or any patio, deck or fence located on any Lot. There is hereby reserved to the Homeowners Association a right and easement of unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article. If an Owner installs a fence or otherwise prevents access for maintenance, the Association shall have no obligation to maintain such Lot.



In the event that the need for maintenance, repair, or replacement results from the willful or negligent act of the owner, his family, guests, tenants, invitees, independent contractors, or contract purchasers, the cost of such maintenance, replacement, or repairs incurred by the Homeowners Association shall be added to and become a part of the assessment for that Lot.

**ARTICLE VII**

**GREENWAY EASEMENT**

Section 1. City of Raleigh Approval. Notwithstanding any other provisions of these Declaration, the Association, Owners, Members, Tenants of members, members' guests or invitees, or families of members shall not, within any portion of the Common Area which is greenway area dedicated to the City of Raleigh, without the prior written consent of the City of Raleigh;

- (a) Grant easements of any nature whatsoever;
- (b) Remove any trees or vegetation;
- (c) Erect gates, fences or other structures;
- (d) Place any garbage receptacles;
- (e) Fill or excavate;
- (f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Lot Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the city and may enter into such agreements with the City of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

**ARTICLE VIII**

**PARTY WALLS-ATTACHED UNITS**

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Townhome Lots, together with any reconstruction or extensions thereof, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support, and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to

the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Any resulting debris shall be promptly removed from said lot.

Section 4. Extension and Repair of Party Walls. The Owner of any Townhome Lot can construct, reconstruct, repair, or extend a party wall in any direction, subject to and within the limitations of architectural control and other limitations of this Declaration or of the City of Raleigh. Each Owner shall have a right and easement over and upon the adjoining Lots to the extent reasonably necessary for such construction, repair and maintenance. Any such construction, repair and maintenance shall be done expeditiously and, upon completion of the work, such Owner shall restore the adjoining Lot to as nearly the same condition as which prevailed prior to the commencement of the work as is reasonably practicable. Any unsafe structures shall be promptly repaired or demolished after the occurrence of any casualty.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner, tenant, guest, invitee, independent contractor or contract purchaser, who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. Any Owner desiring to sell his Lot may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article, request the adjoining property owners to provide a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request without charge; provided, however, that where an adjoining property owner claims a right of contribution, his certification shall contain a recital of the amount claimed and reasons therefor. If a certificate states that no contribution exists, such certificate shall be conclusive evidence that no contribution exists.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina relating to arbitration, as such laws then exist.

#### ARTICLE IX

##### USE RESTRICTIONS

Section 1. Land Use. All Lots shall be used for residential purpose only and only one family may occupy a Lot as a principal residence at any one time. Declarant may maintain a sales office, models and construction office in one or more units in accordance with the Raleigh Municipal Code.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats or other household pets may be kept or maintained provided they are not kept or maintained for commercial purposes.

Section 4. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Board of Directors or its architectural control committee.

Section 5. Use of Homeowners Common Area. The Homeowners Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Board of Directors.

Section 6. Access to Lot. The Homeowners Association and its agents or employees shall have access to any Townhome Lot from time to time during reasonable working hours and with prior oral or written notice to the Owner of such Lot for the maintenance of the Homeowners Common Area or of facilities located thereon or of facilities located upon such Lot which serves the Common Area or another Lot. The Association and its agents shall also have access to any Lot at any time without notice as may be necessary to make emergency repairs to prevent damage to the Homeowners Common Area or another Lot.

Section 7. Clothes Drying. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot or in any other unenclosed area (including patios) within the Properties other than between the hours of 8 A.M. and 5 P.M. on Monday through Friday and 8 A.M. through 1 P.M. on Saturdays and clothes hanging devices such as lines, reels, poles, and frames shall be stored out of sight other than during the times aforementioned.

Section 8. Signs. Except as required by the City Code, no signs or other advertising devices shall be displayed upon any Lot so as to be visible from outside the dwelling without prior written permission of the Board of Directors. Anything herein to the contrary notwithstanding, Declarant may post temporary "For Sale" signs on the Properties until all units owned by Declarant have been sold.

Section 9. Garbage Disposal. Garbage shall be stored within the residence of each Owner or in the storage facilities, if any, provided for said residence at the time same is constructed. No Owner may change or supplement the garbage disposal facilities provided for such Owner's residence as of the date of completion of construction thereof unless the Board of Directors shall first approve in writing the change or addition to the method of storage. Nothing contained herein shall prevent an Owner from complying with the specific requirements of public health authorities or other public agencies regarding garbage disposal.

Section 10. Regulations. Reasonable regulations governing the use of the Homeowners Common Area and external appearance of the Homeowners units may be made and amended from time to time by the Board of Directors of the Homeowners Association. Such regulations and amendments thereto shall not become effective until approved by a majority vote of the Owners. Copies of such regulations and amendment thereto shall be furnished to each Member by the Homeowners Association upon request.

**ARTICLE X**

**EASEMENTS**

Section 1. Access and Utility Easements. Easements for the

installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power line, sanitary sewer and storm drainage facilities and for other public utility installations are reserved as shown on the recorded plat. The Homeowners Association may reserve and grant easements for the installation and maintenance of sewage, utility and drainage facilities over the Properties as provided herein. Within any such easements herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewage disposal facilities and utilities, or which may change the direction of flow or drainage of water through drainage channels in the easements. The Homeowners Association shall also have the continuing right and easement to go into townhouse units and disturb the structure and floors thereof in order to maintain water and sewer lines located within or under said units.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right on, over and under the Properties to maintain and to correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Except when in conflict with laws and regulations of governmental agencies, such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners.

Section 2. Easement of Support. Every Townhome Lot and each single-family attached townhouse constructed thereon and contributing to the support of an abutting townhouse shall be burdened with an easement of support for the benefit of such abutting townhouse. Further, all attachments to the exterior walls of a townhouse which are a part thereof but which protrude beyond the delineated boundaries of the Lot upon which the dwelling is located, and which were constructed in conformity with the plans and specifications, shall be deemed to be included within said delineated boundaries and there is hereby reserved an easement to permit the construction of and continued existence of any such protruding attachment.

Section 3. Easements for Government Access. An easement is hereby established over and across the Homeowners Common Area for the benefit of applicable governmental agencies for setting, removing, and reading water meters, maintaining and replacing water and lines of the City of Raleigh, fire fighting, police protection, garbage collection, and delivery of mail.

Section 4. Owner's Right of Entry for Repair, Maintenance, and Reconstruction. If a dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to repair, maintain, or reconstruct his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of such work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. Easements for Encroachments. All Lots and Homeowner Common Area shall be subject to easements for the encroachment to initial improvements constructed thereon to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, bay windows, steps and walls.

Section 6. Pedestrian Access Easement. Pedestrian access

easements are hereby established for ingress, egress and regress over and through designated pedestrian easements to adjoining Homeowner Common Areas and City Greenways by the Association and owners and their family members, tenants, guests and contract purchasers and the general public. The Association may move machines and equipment in such easement areas when needed to construct, install, repair or maintain facilities and landscaping located within the Homeowner Common Area. No buildings, fences, structures and landscaping shall be located in any pedestrian easement which interferes with the rights of the general public, Owners and the Association. All trees that are either dead, damaged or in a condition that pose a safety hazard or interfere with pedestrian passage shall be removed by the Homeowner's Association.

## ARTICLE XI

### INSURANCE

Section 1. Owner's Responsibility to Insure. Declarant suggests that each Owner, at his expense, secure and maintain in full force and effect one or more insurance policies insuring his Lot and the improvements thereon for the full replacement value thereof against loss and damage from all hazards and risks normally covered by a standard "Extended Coverage" insurance policy, including fire and lightning, vandalism and malicious mischief. Declarant also suggests that each Owner, at his expense, secure and maintain in full force and effect comprehensive personal liability insurance for damage or injury to person or property of others occurring on his Lot.

Section 2. Insurance Responsibilities of the Association. The Homeowners Association shall procure and maintain adequate liability insurance, in an amount not less than \$1,000,000.00, insuring the Homeowners Association and its members against injuries occurring upon the Homeowners Common Area. The Association shall also maintain hazard insurance covering property owned by the Association as set forth herein. Extended hazard insurance shall be obtained and a current replacement cost basis in an amount not less than one hundred percent of the insurance value. See Art. XII, Section 1, (d).

## ARTICLE XII

### FINANCING PROVISIONS

Section 1. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the owners and holders of first deeds of trust on Lots located within the Properties have given their prior written approval, the Homeowners Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Homeowners Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the real property owned to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another non-profit corporation for the purposes set forth herein.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot.

(c) By act or omission change, waive or abandon any plan of

regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of residences located on Lots, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.

(d) Fail to maintain fire and extended coverage insurance on insurable improvements in the Homeowners Common Area on current replace cost basis in an amount not less than one hundred percent (100%) of the insurable value.

(e) Use the proceeds of any hazard insurance policy covering losses to any part of the Homeowners Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

Section 2. Books and Records. Any Owner or holder of a first deed of trust on any Lot, or the agent or agents of either, shall have the right to examine the books and records of the Homeowners Association during any reasonable business hours.

Section 3. Payment of Taxes and Insurance Premiums. The Owners or holders of first deeds of trust on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Homeowners Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Homeowners Association. The persons, firms, or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

### ARTICLE XIII

#### GENERAL PROVISIONS

Section 1. Enforcement. The Homeowners Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Homeowners Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended (including annexations of additional land) during the first twenty-five (25) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article, by the Federal Housing Administration or Veterans Administration, and is recorded in the office of the Register of Deeds for Wake County. No amendment can be enacted without the consent of the Raleigh City Attorney, or his or her deputy.

Section 4. FHA/VA Approval. In the event the Declarant has

arranged for and provided purchasers of Lots with VA or FHA insured mortgage loans, then as long as any Class B Lot exists, as provided in Article II hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mortgaging of real property owned by the Homeowners Association, deeding of Homeowners Common Area to persons other than the Homeowners Association, and amendment of this Declaration.

Section 5. Additions to Existing Property. Additional land may be brought within the schemes of this Declaration in the following manner.

(a) Additional land may be annexed to the Properties by Declarant, its successors or assigns, in future stages of development, without the consent of any other Lot Owner or Owners, provided that said annexations must occur before January 1, 2002. Such additional lands shall include lands contiguous to or directly across the street from the Properties and consisting of not more than one hundred acres; with a maximum number of 600 dwelling units and 6 dwelling units per acre provided, however, all Detached House Lots shall have a minimum lot size of 4356 square feet and the development of the additional lands described herein shall include amenities equivalent in value to those constructed on the existing properties. Prior to the conveyance of any Lot within the additional lands, all Homeowner Common Areas within said additional lands shall be conveyed to the Association as required by Article III, Section 4 hereunder.

(b) The additions authorized under Section (a) above shall be made by filing a record Supplementary Declarations of Covenants, Conditions, and Restrictions with respect to the additional properties which shall extend the scheme of this Declaration to such properties and thereby subject such additions to the benefits, agreements, restrictions, and obligations set forth herein. Such Supplemental Declaration shall reference this document without setting forth the complete text in said Supplemental Declaration. No Supplemental Declaration can be recorded without the consent of the Raleigh City Attorney or his or her deputy.

Section 6. Protective Covenants for Detached House Lots. Nothing herein shall affect the Declarant's right to establish from time to time appropriate protective covenants governing the use of Detached Home Lots and the size and location of structures thereon.

Section 7. Owners Maintenance Responsibilities. Each Townhome Lot Owner shall maintain, repair and replace at his expense all improvements on his Lot which shall need repair, including patios, fencing and decks located on the Lot, all bathroom and kitchen fixtures, light fixtures including electrical or plumbing equipment serving an Owner's unit which are located in a party wall. Further, each Owner shall repair, maintain and replace at his own expense, when necessary, the heating and air conditioning systems servicing his dwelling, whether located on his Lot or in the Common Area adjacent to the Lot.

Section 8. Developer Rights. Said real property described in Exhibit A is part of a cluster unit development approved by the City of Raleigh in which residential density transfers are permitted; therefore, even though some lots may appear to contain enough land area to construct additional dwelling units or create additional lots, prior density transfers approved with in the cluster unit development may, in fact, preclude City of Raleigh approval of additional dwellings or further subdividing of lots.

Section 9. Private Street Maintenance, Construction and Emergency Access. In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service to any cluster unit development or townhouse development or occupants thereof where such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the developer, the Association or occupants.

In no case shall the City or State be responsible for maintaining any private street. Such responsibility shall rest with the Homeowners Association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

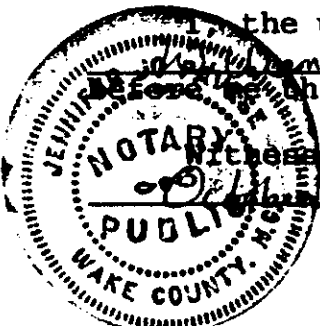
IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on this the 9th day of October, 1998.

William J. Brown, Jr. (SEAL)  
William J. Brown, Jr.

Robert H. Brown (SEAL)  
Robert H. Brown

STATE OF NORTH CAROLINA

COUNTY OF WAKE



I, the undersigned Notary Public, do hereby certify that William J. Brown, Jr. personally came before me this day and acknowledged the foregoing instrument.

In my hand and notarial seal, this 9th day of October, 1998.

Jennifer Powers  
Notary Public

My Commission Expires: 2-9-2003

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that William J. Brown, Jr. personally appeared before me this day and acknowledged the execution of the foregoing



BK8186PG0576

instrument. Witness my hand and official stamp or seal, this 9<sup>th</sup>  
day of October, 1998.

Bonnie Wilkes Blinn  
Notary Public

My commission expires: 12-10-2001

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid,  
certify that Robert H. Brown personally appeared before me this  
day and acknowledged the execution of the foregoing instrument.  
Witness my hand and official stamp or seal, this 9<sup>th</sup> day of  
October, 1998.

Bonnie Wilkes Blinn  
Notary Public

My commission expires: 12-10-2001



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate 5 of George J. Pausse  
Bonnie Wilkes Blinn Notar(y)(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and  
time and in the book and page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By Sandra K. Calleb  
Asst./Deputy Register of Deeds

BK 8186P60577

EXHIBIT A

Lots 1,2,3,4,5,6,7,8,9 & 10;  
Blocks 1,2,3,4 & 5; and  
Lot 2 Townhome Site  
Walnut Bluffs Subdivision  
Book of Maps 1998, Page 2002  
Wake County Registry  
Being a total of 4.959 Acres  
(2.931 Acres in Lot 1 and 2.028  
Acres in Lot 2)